

consistent with policies, regulations, standards, and guidelines issued by OMB, GSA, and the Department of Commerce.

c. The terms of the contract should preclude the contractor from using, disclosing, copying, or retaining records associated with the matching program for the contractor's own use.

d. Contractor personnel involved in the matching program shall be made explicitly aware of their obligations under the Privacy Act and of these guidelines, agency rules, and any special safeguards in relation to each specific match performed.

e. Any disclosures of records by the agency to the contractor should be made pursuant to a "routine use" (5 U.S.C. 552a(b)(3)).

F. *Implementation and Oversight.* OMB will oversee the implementation of these guidelines and will interpret and advise upon agency proposals and actions within their scope, consistent with section 6 of the Privacy Act.

#### APPENDIX F TO PART 323—LITIGATION STATUS SHEET

1. Case Number.<sup>1</sup>
2. Requester.
3. Document Title or Description.<sup>2</sup>
4. Litigation.
  - a. Date Complaint Filed.
  - b. Court.
  - c. Case File Number.<sup>1</sup>
5. Defendants (DoD Component and individual).
6. Remarks (brief explanation of what the case is about).
7. Court Action.
  - a. Court's Finding.
  - b. Disciplinary Action (as appropriate).
8. Appeal (as appropriate).
  - a. Date Complaint File.
  - b. Court.
  - c. Case File Number.<sup>1</sup>
  - d. Court's Finding.
  - e. Disciplinary Action (as appropriate).

#### APPENDIX G TO PART 323—PRIVACY ACT ENFORCEMENT ACTIONS

A. *Administrative Remedies.* Any individual who feels he or she has a legitimate complaint or grievance against the Defense Logistics Agency or any DLA employee concerning any right granted by this DLAR will be permitted to seek relief through appropriate administrative channels.

B. *Civil Actions.* An individual may file a civil suit against DLA or its employees if the

<sup>1</sup>Number used by the Component for reference purposes.

<sup>2</sup>Indicate the nature of the case, such as "Denial of access," "Refusal to amend," "Incorrect records," or other violations of the Act (specify).

individual feels certain provisions of the Privacy Act have been violated (see 5 U.S.C. 552a(g), reference (b).)

C. *Civil Remedies.* In addition to specific remedial actions, the Privacy Act provides for the payment of damages, court cost, and attorney fees in some cases.

#### D. *Criminal Penalties—*

1. The Privacy Act also provides for criminal penalties (see 5 U.S.C. 552a(1)). Any official or employee may be found guilty of a misdemeanor and fined not more than \$5,000 if he or she willfully discloses personal information to anyone not entitled to receive the information, or maintains a system of records without publishing the required public notice in the FEDERAL REGISTER.

2. A person who requests or obtains access to any record concerning another individual under false pretenses may be found guilty of a misdemeanor and fined up to \$5,000.

#### APPENDIX H TO PART 323—DLA EXEMPTION RULES

*Exempted Records Systems.* All systems of records maintained by the Defense Logistics Agency will be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain isolated items of information which have been properly classified.

#### a. *ID: S500.10 (Specific exemption).*

1. *System name:* Personnel Security Files.
2. *Exemption:* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Therefore, portions of this system may be exempt pursuant to 5 U.S.C. 552a(k)(5) from the following subsections of 5 U.S.C. 552a(c)(3), (d), and (e)(1).
3. *Authority:* 5 U.S.C. 552a(k)(5).
4. *Reasons:* (i) From subsection (c)(3) and (d) when access to accounting disclosures and access to or amendment of records would cause the identity of a confidential source to be revealed. Disclosure of the source's identity not only will result in the Department breaching the promise of confidentiality

made to the source but it will impair the Department's future ability to compile investigatory material for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. Unless sources can be assured that a promise of confidentiality will be honored, they will be less likely to provide information considered essential to the Department in making the required determinations.

(ii) From (e)(1) because in the collection of information for investigatory purposes, it is not always possible to determine the relevance and necessity of particular information in the early stages of the investigation. In some cases, it is only after the information is evaluated in light of other information that its relevance and necessity becomes clear. Such information permits more informed decision-making by the Department when making required suitability, eligibility, and qualification determinations.

B. ID: S500.20 (SPECIFIC EXEMPTION).

1. *System name:*

Defense Logistics Agency Criminal Incident Reporting System Records.

2. *Exemption:*

(i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(k)(2) if the investigative material is compiled for law enforcement purposes. However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) The specific sections of 5 U.S.C. 552a from which the system is to be exempted are 5 U.S.C. 552a(c)(3) and (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (f), and (g).

3. *Authority:*

5 U.S.C. 552a(k)(2).

4. *Reasons:*

(i) From subsection (c)(3) because to grant access to an accounting of disclosures as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing

its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (c)(4), (d), and (f) because providing access to this information could result in the concealment, destruction or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component and could result in the invasion of privacy of individuals only incidentally related to an investigation. Investigatory material is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished the information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975 under an implied promise that the identity of the source would be held in confidence. This exemption will protect the identities of certain sources that would be otherwise unwilling to provide information to the Government. The exemption of the individual's right of access to his/her records and the reasons therefore necessitate the exemptions of this system of records from the requirements of the other cited provisions.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal investigation.

(v) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(vi) From subsections (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of

the Act, under an implied promise). In addition, this system of records is exempt from the access provisions of subsection (d).

(vii) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(viii) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to the individual and record amendment procedures for this record system.

(ix) From subsection (g) because this system of records should be exempt to the extent that the civil remedies relate to provisions of 5 U.S.C. 552a from which this rule exempts the system.

*c. ID: S100.50 DLA-GC (Specific exemption).*

1. *System name:* Fraud and Irregularities.

2. *Exemption:* This system of records is exempt from the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (4), (e)(1), (e)(4)(G), (H), and (I), and (f).

3. *Authorities:* 5 U.S.C. 552a(k)(2) and (k)(5).

4. *Reasons:* From subsection (c)(3) because granting access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

From subsections (d)(1) through (d)(4) and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case prepa-

ration. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

From subsections (e)(4)(G) and (H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system.

From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

*d. ID: S100.10 GC (Specific exemption).*

1. *System name:* Whistleblower Complaint and Investigation Files.

2. *Exemption:* Portions of this system of records may be exempt under the provisions of 5 U.S.C. 552a(c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I), and (f).

3. *Authority:* 5 U.S.C. 552a(k)(2).

4. *Reasons:* From subsection (c)(3) because granting access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with

and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

From subsection (e)(1), because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

From subsections (e)(4)(G) and (e)(4)(H) because there is no necessity for such publication since the system of records will be exempt from the underlying duties to provide notification about and access to information in the system and to make amendments to and corrections of the information in the system. However, DLA will continue to publish such a notice in broad generic terms as is its current practice.

From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

e. *ID: S500.60 (Specific exemption).*

1. *System name:* DLA Hotline Program Records.

2. *Exemption:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

3. *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5), subsections (c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f).

4. *Reasons:* (i) From subsection (c)(3) because to grant access to an accounting of disclosures as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for law enforcement purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

f. *ID: S500.30 (Specific exemption).*

1. *System name:* Incident Investigation/Police Inquiry Files.

2. *Exemption:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

3. *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5), subsections (c)(3), (d)(1) through (d)(4), (e)(1), (e)(4)(G), (H), and (I), and (f).

4. *Reasons:* (i) From subsection (c)(3) because to grant access to the accounting for each disclosure as required by the Privacy Act, including the date, nature, and purpose of each disclosure and the identity of the recipient, could alert the subject to the existence of the investigation or prosecutive interest by DLA or other agencies. This could seriously compromise case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate; and lead to suppression, alteration, or destruction of evidence.

(ii) From subsections (d)(1) through (d)(4), and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for law enforcement purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants. DLA will, nevertheless, continue to publish such a notice in broad generic terms as is its current practice.

*g. ID: S510.30*

1. *System name:* Freedom of Information Act/Privacy Act Requests and Administrative Appeal Records.

2. *Exemption:* During the processing of a Freedom of Information Act request, exempt materials from other systems of records may in turn become part of the case record in this system. To the extent that copies of exempt records from those “other” systems of records are entered into this system, the Defense Logistics Agency claims the same exemptions for the records from those “other” systems that are entered into this system, as claimed for the original primary system of which they are a part.

3. *Authority:* 5 U.S.C. 552a(j)(2), (k)(2), (k)(3), (k)(4), (k)(5), (k)(6), and (k)(7).

4. *Reasons:* Records are only exempt from pertinent provisions of 5 U.S.C. 552a to the extent such provisions have been identified and an exemption claimed for the original record and the purposes underlying the exemption for the original record still pertain to the record which is now contained in this system of records. In general, the exemptions were claimed in order to protect properly classified information relating to national defense and foreign policy, to avoid interference during the conduct of criminal, civil, or administrative actions or investigations, to ensure protective services provided the President and others are not compromised, to protect the identity of confidential sources incident to Federal employment, military service, contract, and security clearance determinations, to preserve the confidentiality and integrity of Federal testing materials, and to safeguard evaluation materials used for military promotions when furnished by a confidential source. The exemption rule for the original records will identify the specific reasons why the records

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are exempt from specific provisions of 5 U.S.C. 552a.

[DLAR 5400.21, 51 FR 33595, Sept. 22, 1986. Redesignated at 56 FR 57803, Nov. 14, 1991, as amended at 55 FR 32913, Aug. 13, 1990; 57 FR 40609, Sept. 4, 1992; 59 FR 9668, Mar. 1, 1994; 60 FR 3088, Jan. 13, 1995; 61 FR 2916, Jan. 30, 1996; 63 FR 25772, May 11, 1998; 65 FR 18900, Apr. 10, 2000; 71 FR 64633, Nov. 3, 2006; 72 FR 14041, Mar. 26, 2007; 75 FR 61618, Oct. 6, 2010; 76 FR 22809, April 25, 2011; 76 FR 49661, Aug. 11, 2011]

### PART 324—DFAS PRIVACY ACT PROGRAM

#### Subpart A—General Information

- Sec.
- 324.1 Issuance and purpose.
- 324.2 Applicability and scope.
- 324.3 Policy.
- 324.4 Responsibilities.

#### Subpart B—Systems of Records

- 324.5 General information.
- 324.6 Procedural rules.
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#### Subpart C—Individual Access to Records

- 324.8 Right of access.
- 324.9 Notification of record's existence.
- 324.10 Individual requests for access.
- 324.11 Denials.
- 324.12 Granting individual access to records.
- 324.13 Access to medical and psychological records.
- 324.14 Relationship between the Privacy Act and the Freedom of Information Act.

#### APPENDIX A TO PART 324—DFAS REPORTING REQUIREMENTS

#### APPENDIX B TO PART 324—SYSTEM OF RECORDS NOTICE

AUTHORITY: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

SOURCE: 61 FR 25561, May 22, 1996, unless otherwise noted.

#### Subpart A—General information

##### § 324.1 Issuance and purpose.

The Defense Finance and Accounting Service fully implements the policy and procedures of the Privacy Act and the DoD 5400.11-R<sup>1</sup>, 'Department of Defense Privacy Program' (see 32 CFR part 310). This regulation supplements

the DoD Privacy Program only to establish policy for the Defense Finance and Accounting Service (DFAS) and provide DFAS unique procedures.

##### § 324.2 Applicability and scope.

This regulation applies to all DFAS, Headquarters, DFAS Centers, the Financial System Organization (FSO), and other organizational components. It applies to contractor personnel who have entered a contractual agreement with DFAS. Prospective contractors will be advised of their responsibilities under the Privacy Act Program.

##### § 324.3 Policy.

DFAS personnel will comply with the Privacy Act of 1974, the DoD Privacy Program and the DFAS Privacy Act Program. Strict adherence is required to ensure uniformity in the implementation of the DFAS Privacy Act Program and to create conditions that will foster public trust. Personal information maintained by DFAS organizational elements will be safeguarded. Information will be made available to the individual to whom it pertains to the maximum extent practicable. Specific DFAS policy is provided for Privacy Act training, responsibilities, reporting procedures and implementation requirements. DFAS Components will not define policy for the Privacy Act Program.

##### § 324.4 Responsibilities.

(a) *Director, DFAS.* (1) Ensures the DFAS Privacy Act Program is implemented at all DFAS locations.

(2) The Director, DFAS, will be the Final Denial Appellate Authority. This authority may be delegated to the Director for Resource Management.

(3) Appoints the Director for External Affairs and Administrative Support, or a designated replacement, as the DFAS Headquarters Privacy Act Officer.

(b) *DFAS Headquarters General Counsel.* (1) Ensures uniformity is maintained in legal rulings and interpretation of the Privacy Act.

(2) Consults with DoD General Counsel on final denials that are inconsistent with other final decisions within DoD. Responsible to raise new legal

<sup>1</sup>Copies may be obtained at cost from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.